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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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FULLER BOX CO., INC.

Plaintiff,

ECF CASE

v.

OOCL (USA) INC., and INTRANSIT CONTAINER, INC.

07 CIV 9375 (Judge Stein)

Defendants.

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**DEFENDANT INTRANSIT CONTAINER, INC.'s  
ANSWER TO OOCL (USA) INC.'S CROSS-CLAIM**

Defendant, Intransit Container, Inc. ("Intransit"), by its attorneys, Barry N. Gutterman & Associates, P.C., for its Answer and Affirmative Defenses to Defendant OOCL (USA) Inc.'s ("OOCL") Cross-Claim, states as follows:

- 1-23. Intransit does not respond to paragraphs 1-23 of OOCL's Answer as such allegations are not addressed to it.
23. The Answer has a duplicative paragraph 23. However, Intransit denies the second paragraph 23 of the Cross-Claim.
24. Intransit denies paragraph 24 of the Cross-Claim.

**AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE**

25. The shipment referred to in the Complaint was loaded and counted by the shipper and/or its agent or other parties over whom Intransit had no control. Intransit is not responsible for any damage or loss to such shipment caused by the improper loading or counting thereof by other parties over whom it had no control.

**AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE**

26. If the shipment referred to in the Complaint suffered any loss or damage or delay, which is herein expressly denied, such loss, damage or delay was the result of the inherent nature and condition of the shipment for which Intransit is not liable to Plaintiff, or was caused by parties over whom Intransit had no control, and, as such, Intransit is not liable to Plaintiff.

**AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE**

27. In the event that said shipment moved subject to any statutory or contractual limitations of liability, either specifically agreed to or contained in any applicable law, tariffs, circulars, and/or governing publications, the plaintiff and/or OOCL may not recover in excess of such limitations.

**AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE**

28. To the extent that the Plaintiff and/or OOCL failed to meet the minimum filing requirements of filing a proper written claim within the time prescribed, this lawsuit is time barred.

**AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE**

29. To the extent that OOCL failed to file its Cross-Claim within the period prescribed, this Cross-Claim is time barred.

**AS AND FOR A SIXTH  
AFFIRMATIVE DEFENSE**

30. The Cross-Claim fails to state a claim against Intransit upon which relief may be granted.

**AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE**

31. The bill of lading, tariffs and classifications, and the governing publications do not contemplate responsibility for special damages. To the extent that Plaintiff and/or OOCL seeks recovery for special damages, Intransit is not responsible for such amounts.

**AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE**

32. Intransit is not responsible or liable for any negligence which was a proximate cause of any alleged incident or damages of which Plaintiff and/or OOCL alleges.

**AS AND FOR A NINTH  
AFFIRMATIVE DEFENSE**

33. Intransit is not responsible or liable for an Act of God with regard to the alleged damage to the shipment.

WHEREFORE, Defendant Intransit Container, Inc. demands judgment be entered herein:

(1) dismissing OOCL's Cross-Claim against it with prejudice, together with interest, costs, disbursements and attorneys fees incurred herein; and (2) for such other further and/or different relief as this Court may deem just and proper.

Dated: New York, New York  
December 27, 2007

By: /s/ Barry Gutterman  
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